

REMARKS/ARGUMENTS

Claims 1 to 8 and 19 to 30 remain in this application. Claims 9 to 18 have been canceled, without prejudice, to filing in a continuing application.

Support for the amendment to claims 1, 19, 21 and 26 are found at page 3, lines 10 to 13, page 6, lines 9 to 12, page 8, lines 6 to 11, and the Figures, for example. Support for the amendment to claim 4 is found at page 6, lines 20 and 21. Claims 22 and 27 have been amended in view of the amendments to claims 21 and 26.

Claim 7 has been amended to overcome the indefiniteness rejection. Support for the amendment is found in the original specification at page 8, lines 1 to 8.

The Figures have been amended by printing them on A4 paper, moving the labels "Figure 1" and "Figure 2" further down the page, shortening the right hand side of the horizontal line in Figure 2, and moving the reference numeral "1" in Figure 2 to create proper margins.

The Examiner has rejected claims 1, 6 and 19 as being anticipated by Drout et al. US Patent No. 5,084,501. However, not all of the limitations of independent claims 1 and 19 are disclosed in Drout et al.

Claims 1 and 19 require "the portion of the second layer adjacent the exposed surface [to] compris[e] substantially all transparent or translucent particles." In Drout et al. the "filler particles were coated with the liquid components and then a dispersion grade PVC resin was blended with the coated filler particles. By this means, the relatively small, less than 15 micron resin particles would coat or adhere to the surface of the relatively large filler particles." Column 3, lines 40 to 48. Therefore, the relatively

large filler particles, which the Examiner states “resemble the pigmented particles,” are distributed throughout the Drout et al. composition and Drout et al. does not teach a layer of substantially all transparent or translucent particles, and claims 1, 19 and 6, which depends on claim 1, are not anticipated by Drout et al.

Further, independent claims 1, 19, 21 and 36 are directed to a welding rod or a surface covering having a seam formed from a welding rod and at least two sheets. The highly filled resin composition of Drout et al. cannot be used to form a welding rod. See the enclosed declaration of Mr. Richard Balmer, enclosed herewith. The 60% to 95% filled resin composition does not have sufficient resin to yield the necessary strength to bond two surface covering sheets together. Therefore, independent claims 1, 19, 26 and 21 are neither anticipated nor obvious in view of Drout et al.

All of the claims remaining in the application have been rejected as being obvious over Drout et al. in view Lussi et al. US Patent No. 5,290,591. The Examiner states in the carryover sentence on pages 2 and 3 of the Office Action that the “resin particles [of Drout et al.] are dispersion grade PVC resin which conventionally is transparent.” This may be true for PVC resin that has been subjected to heat and pressure, but the PVC resins that form the resin compositions disclosed in Drout et al. have not been subjected to heat and pressure, and therefore are opaque. Near the bottom of page 3 of the Office Action, the Examiner concedes that “Drout does not explicitly state the resin particles are transparent or translucent or the degree of transparency.” Further, see the enclosed declaration of Mr. Richard Balmer. Therefore, since the PVC resin of Drout et al. is not transparent or translucent, the claims are not anticipated by Drout et al. for this reason as well.

The Examiner states, in the second paragraph of section 5 on page 3 of the Office Action, "The powdered highly filled PVC resin is comprised of a larger size filler particles (as a bottom layer) and a smaller size PVC resin particles as a surface layer" citing column 3, lines 37 to 39 and 42 to 47. However, while Drout et al. teach larger size filler particles and smaller size PVC particles (col. 3, l. 42 to 48, and col. 4, l. 3 to 6), the teaching of the filler tending to settle at the bottom refers to the prior art. See column 3, lines 21 to 39.

The invention of Drout et al. is a highly filled resin composition, which retains its uniform distribution and which can be used to make a resilient floor. See column 3, lines 21 to 25 and 49 to 51. It is the prior art filled resin composition, in which the heavier filler tends to settle to the bottom. See column 3, lines 30 to 39. There is no teaching or suggestion of the size of the prior art resin particles. In fact at column 3, lines 25 to 25, Drout et al. state that "[i]f the resin particles are relatively large compared to the filler particles, the resin particles will not adhere to or coat the filler particles and the filler particles would tend to concentrate at the bottom of the resin composition." Since Drout et al. teach relatively small resin particles, the resin particles adhere to the filler particles and the filler particles do not concentrate at the bottom of the resin composition.

One of ordinary skill in the art would mix the highly filled resin composition of the prior art shortly prior to forming and processing the flooring structure to obtain a uniform distribution of particles. This was the problem solved by Drout et al. See the enclosed declaration of Mr. Richard Balmer. Therefore, the prior art teaches away from the present invention.

Near the middle of page 4 of the Office Action, the Examiner states “In view of the prior art teaching, one skill [sic] in the art would fabricate a three dimensional thermoplastic rod that comprised of pigment particles layers [sic] and transparent or translucent particles layer as disclosed by Drout because it is known to put one particles layer over another particle layer.” The Examiner is respectfully requested to support her position with an affidavit as required by 37 CFR 1.104(d)(2). See MPEP Section 707.

Even if the resin particles of Drout et al. were transparent or translucent, how does one disassemble the resin particles that are adhered to the filler particles in Drout et al. to form two layers of particles? Where is the motivation to do so?

It is not apparent how Drout et al. has been combined with Lussi et al. Drout et al. teach a highly filled PVC resin powder which is formed by coating filler particles with a liquid and blending a dispersion grade PVC resin with the coated filler particles to obtain uniform distribution of the resin and filler. Abstract and column 2, lines 52 to 56. Lussi et al. teach a decorative inlaid floor or wall covering product comprising a substrate on which a pattern or design is printed, the printed substrate underlying an adhesive layer in which transparent and/or translucent PVC particle are embedded. Column 3, lines 48 to 58; column 5, lines 5 and 6, and column 10, lines 29 to 31.

The Examiner does not explain how the teachings of Lussi et al. are combined with the teachings of Drout et al. to obtain the claimed invention. Further, neither Drout et al. nor Lussi et al. teach or suggest a weld rod structure.

Claims 1, 4, 19, 21 and 26 have been amended to further distinguish the highly filled composition of Drout et al. and the inlaid sheet of Lussi et al. PVC particles of Lussi et al., which are embedded in the adhesive layer, do not fill the some of the voids of

the pigment in the ink, nor does the particle layer of Lussi et al. penetrate into the ink layer as required by amended claims 19, 21 and 26.

The invention of Drout et al. is not directed to two layers of particles. The pigmented particles of the Lussi et al. ink are not consolidated. Therefore, claim 3 is patentable over Drout et al. in view of Lussi et al.

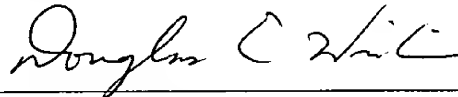
Neither the composition of Drout et al. or the Lussi et al. ink include jaspes, clears, pearl chips, accents or mottled, as required by claim 4, or the transparent particles of claim 5. Therefore, claims 4 and 5 are patentable over Drout et al. in view of Lussi et al.

The pigmented particles of Lussi et al. are not larger than the transparent or translucent particles embedded in the adhesive. Therefore, claims 6, 22 and 27 are allowable over Drout et al. and Lussi et al. for this reason as well.

Neither Drout et al. nor Lussi et al. teach or suggest the intermixing of particles between the first and second layers as required by claims 25 and 30. Therefore, claims 25 and 30 are allowable over Drout et al. and Lussi et al.

Applicants maintain that the claims are in condition for allowance. Therefore, they respectfully request that a timely Notice of Allowance be issued in the application.

Respectfully submitted,



Douglas E. Winters
Reg. No. 29,990
Attorney for Applicants

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Date

Armstrong World Industries, Inc.
P.O. Box 3001
Lancaster, PA 17604
(717) 396-4070 (Telephone)
(717) 396-6121 (Facsimile)

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